

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JESSE AVILA,

Plaintiff,

v.

JEANNE WOODFORD, et al.,

Defendants.

C 07-0143 CW

**[PROPOSED] ORDER
GRANTING DEFENDANT'S
MOTION TO DISMISS**

This is a prisoner-civil-rights suit. Defendant Woodford has moved for a dismissal of Plaintiff Avila's civil-rights claim under Federal Rule of Civil Procedure 12(b)(6). After fully considering the parties' arguments, the Court grants Defendant's motion and makes the following findings and orders:

A person subjects another to the deprivation of a constitutional right if he does an affirmative act, participates in another's affirmative act, or omits to perform an act that he is legally required to do and causes the deprivation of which the complaint is made. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Thus, to state a claim under § 1983, a plaintiff must properly allege that each defendant committed some act, or failed to act in some way, that caused plaintiff's alleged injury. Plaintiff has failed to show how Defendant was deliberately indifferent to his safety. Nowhere in his complaint did Plaintiff properly allege that Defendant was aware of

1 a known risk or that she disregarded that risk. Vague and conclusory allegations against
2 Defendant, all based on the employment position she held at the time of the alleged events, are
3 insufficient to withstand a motion to dismiss.

4 Moreover, Defendant may not be held liable on a theory of vicarious liability. A defendant
5 whose personal involvement is not alleged cannot be held liable for the acts of their subordinates
6 under a theory of respondeat superior or vicarious liability. *Milton v. Nelson*, 527 F.2d 1158,
7 1159 (9th Cir. 1976). Vicarious liability on the part of a supervisory official is not recognized as
8 a basis for liability under the Civil Rights Act. *Palmer v. Sanderson*, 9 F.3d 1433, 1438 (9th Cir.
9 1993). A supervisor is liable only when he or she has directly participated in or proximately
10 caused the alleged deprivation. *Id.* at 1437-38. Plaintiff's allegations against Defendant are
11 based on the position she held, and not her personal acts. Thus, Defendant is properly dismissed.

12 IT IS HEREBY ORDERED that Plaintiff's complaint is dismissed with prejudice against
13 Defendant.

14
15 DATED: _____

Hon. Claudia Wilken
UNITED STATES DISTRICT COURT

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **J. Avila v. J. Woodford, et al.**

No.: **C 07-0143 CW**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On May 28, 2008, I served the attached

DEFENDANT'S NOTICE OF MOTION AND MOTION TO DISMISS

[Proposed] ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Jesse Avila
2845 Buena Crest Court
San Jose, CA 95121
Pro Per
BFN CQL474:BKN07017371**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 28, 2008, at San Francisco, California.

T. Oakes

Declarant

/s/ T. Oakes

Signature